

STATE OF INDIANA) IN THE MADISON SUPERIOR/CIRCUIT COURT
COUNTY OF MADISON) SS: 48D03-08080C-01045
CAUSE NO.

STATE OF INDIANA)
Plaintiff,)
v.)
HOWARD HAMPTON, individually and)
doing business as PWC TECHNOLOGIES)
and PLAY TIME POWER SPORTS, INC.,)
Defendant.)

FILED
2008 AUG - 6 AM 8:31
LUDY WATKINS
CLERK
MADISON CO SUPERIOR COURT
ANDERSON INDIANA

**COMPLAINT FOR INJUNCTION,
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Greg Schrage, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).
2. At all times relevant to this complaint, the Defendant, Howard Hampton, individually and doing business as PWC Technologies and Play Time Power Sports, Inc., was an individual engaged in the business of repairing watercraft engines at his principal place of business located in Madison County at 5266 State Road 32 West, Anderson, Indiana, 46011.

FACTS

3. Since at least March 1, 2007, the Defendant has solicited and received orders via the Internet to repair or rebuild watercraft engines and motors.

A. Allegations regarding Consumer Jeffrey D. Karam's Transaction

4. On or about March 2007, Defendant Howard Hampton doing business as PWC Technologies entered into a contract with Jeffrey D. Karam ("Karam") of Montgomery, Texas, wherein Defendant represented that he would repair a short block engine at a price of One Thousand Three Hundred Dollars (\$1,300.00). Karam paid Three Hundred Dollars (\$300.00) and sent the engine to Defendant.

5. Defendant represented that the short block engine would be repaired and returned to Karam within one month.

6. Pursuant to Indiana Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time contracting that he would deliver the repaired engine within a reasonable period of time.

7. On or about April 5, 2008, Defendant informed Karam that his engine was repaired at the cost of Four Thousand Six Hundred Dollars (\$4,600.00).

8. Defendant did not obtain written permission from Karam to authorize Defendant to complete the repair if the cost of the repair exceeded the estimate.

9. Defendant knew or should have reasonably known that the cost of repairing Karam's engine would exceed the estimate by an amount equal to or greater than One Hundred Thirty Dollars (\$130.00).

10. As of today, Defendant has yet to either deliver the repaired engine or provide a refund to Karam.

B. Allegations regarding Consumer Todd W. Norton's Transaction

11. On or about June 6, 2007, Defendant Howard Hampton doing business as PWC Technologies entered into a contract with Todd W. Norton ("Norton") of Crystal, Minnesota, to rebuild a motor. Norton paid Two Thousand Dollars (\$2,000.00) for this service and sent his motor to Defendant.

12. Pursuant to Indiana Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of contracting that he would deliver the rebuilt motor within a reasonable period of time.

13. As of today, the Defendant has yet to either deliver the rebuilt motor, return the unrepaired motor, or provide a refund to Norton.

C. Allegations regarding Consumer Donald C. Westphal's Transaction

14. On or about August 7, 2007, Defendant Howard Hampton doing business as Play Time Power Sports, Inc. entered into a contract with Donald C. Westphal ("Westphal") of Rochester, Michigan, to repair a jet ski engine. Westphal paid Two Thousand Five Hundred Thirty-Nine Dollars (\$2,539.00) for this service and sent his engine to Defendant.

15. Pursuant to Indiana Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of contracting that he would deliver the repaired jet ski engine within a reasonable period of time.

16. As of today, the Defendant has yet to either deliver the repaired engine, return the unrepaired engine, or provide a refund to Westphal.

D. Allegations regarding Consumer Michael Ewaschuk's Transaction

17. On or about November 27, 2007, Defendant Howard Hampton doing business as PWC Technologies entered into a contract with Michael Ewaschuk ("Ewaschuk") of Haverhill,

Massachusetts, to rebuild a Kawasaki Jet Ski 1100DI motor. Ewaschuk paid One Thousand Seven Hundred Sixty Dollars (\$1,760.00) for this service and sent his motor to Defendant.

18. Pursuant to Indiana Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of contracting that he would deliver the repaired motor within a reasonable period of time.

19. As of today, the Defendant has yet to either deliver the repaired motor, return the unrepaired motor, or provide a refund to Ewaschuk.

E. Allegations regarding Vincent DeVito's Transaction

20. On or about July 10, 2007, Defendant Howard Hampton entered into a contract with Vincent DeVito ("DeVito") of Gardiner, New York, to rebuild a watercraft motor. DeVito subsequently sent his motor to Defendant.

21. Pursuant to Indiana Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of contracting that he would deliver the repaired motor within a reasonable time.

22. In early 2008, Defendant returned DeVito's motor without rebuilding it. The returned motor was missing a crankshaft that was sent to Defendant by DeVito which DeVito was forced to replace at a cost of Four Hundred Dollars (\$400.00).

COUNT I—VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

23. The Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 22 of this Complaint.

24. The transactions referred to in Paragraphs 4, 11, 14, 17, and 20 of this complaint are "consumer transactions" as defined by Indiana Code § 24-5-0.5-2(a)(1).

25. Defendant is a "supplier" as defined by Indiana Code § 24-5-0.5-2(a)(3).

26. The Defendant's representations to consumers, including Karam, Norton, Westphal, Ewaschuk, and DeVito, that he would repair or rebuild the engines or motors, when the Defendant knew or reasonably should have known the consumers would not receive the services as represented, or any other such benefit, as referenced in Paragraphs 4, 11, 14, 17, and 20 of this Complaint, constitute violations of the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-3(a)(1).

27. The Defendant's representations to consumers, including Karam, that an engine can be repaired or rebuilt by Defendant for an estimated price given by Defendant to consumers, when the specified work is completed and the cost exceeds the estimate by an amount equal to or greater than ten percent (10%) of the estimate; the Defendant did not obtain written permission from the consumer to authorize Defendant to complete the work even if the cost would exceed the estimate by an amount equal or greater than ten percent (10%) of the estimate; the total cost for services and parts for the transaction is greater than Seven Hundred Fifty Dollars (\$750.00); and Defendant knew or reasonably should have known that the cost would exceed the estimate by an amount equal to or greater than ten percent (10%) of the estimate, as referenced in Paragraphs 4, 7, 8, and 9 of this Complaint, constitute violations of the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-3(a)(12).

28. The Defendant's representations to consumers, including Karam, that he would be able to deliver the repaired engine, or otherwise complete the subject of the consumer transaction within the stated period of time, when the Defendant knew or reasonably should have known he could not, as referenced in Paragraph 5 of this Complaint, constitute a violation of the Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-3(a)(10).

29. The Defendant's representations to consumers, including Karam, Norton, Westphal, Ewaschuk, and DeVito, that he would be able to deliver the repaired or rebuilt engines or motors, or otherwise complete the subject of the consumer transaction within a reasonable period of time, when the Defendant knew or reasonably should have known he could not, as referenced in Paragraphs 6, 12, 15, 18, and 21 of this Complaint, constitute violations of the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-3(a)(10).

30. The Defendant's representations to consumers, including Karam, Norton, Westphal, Ewaschuk, and DeVito, that the Defendant would repair or rebuild the engines or motors as advertised by the Defendant, when the Defendant did not intend to repair or rebuild the engines or motors, as referenced in Paragraphs 4, 11, 14, 17, and 20 of this Complaint, constitute violations of the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-3(a)(11).

**COUNT II—KNOWING AND INTENTIONAL VIOLATIONS OF THE DECEPTIVE
CONSUMER SALES ACT**

31. The Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 30 of this Complaint.

32. The misrepresentations and deceptive acts set forth in Paragraphs 4, 5, 6, 7, 8, 9, 11, 12, 14, 15, 17, 18, 20, 21 of this Complaint, were committed by the Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court to enter judgment against the Defendant, Howard Hampton, individually and doing business as PWC Technologies and Play Time Power Sports, and issue a permanent injunction, pursuant to Indiana Code § 24-5-0.5-4(c)(1), enjoining the Defendant from doing the following:

- a. representing, expressly or by implication, that the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know he cannot; and
- b. representing, expressly or by implication, that consumers will be able to purchase the subject of a consumer transaction as advertised by the Defendant, if the Defendant does not intend to sell it.
- c. representing, expressly or by implication, that the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or reasonably should know it does not have.
- d. representing, expressly or by implication, that the replacement or repair constituting the subject of a consumer transaction can be made by Defendant for the estimated price Defendant gives a consumer, if the work is completed and the cost exceeds the estimate by an amount equal to or greater than ten percent (10%) of the estimate; the Defendant did not obtain written permission from the consumer to authorize the Defendant to complete the work even if the cost would exceed the estimate by an amount equal to or greater than ten percent (10%); the total cost for services and parts for a single transaction is more than Seven Hundred Fifty Dollars (\$750.00); and the Defendant knew or reasonably should have known that the cost would exceed the estimate by an amount equal to or greater than ten percent (10%) of the estimate.

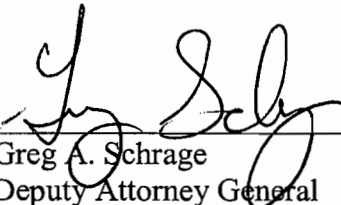
AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against Defendant for the following relief:

- a. cancellation of all of the Defendant's unlawful contracts with consumers, including but not limited to, Jeffrey D. Karam, Todd W. Norton, Donald C. Westphal, Michael Ewaschuk, and Vincent DeVito;
- b. consumer restitution, pursuant to Indiana Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers to the Defendant, including but not limited to Jeffrey D. Karam, Todd W. Norton, Donald C. Westphal, Michael Ewaschuk, and Vincent DeVito in an amount to be determined at trial;
- c. costs, pursuant to Indiana Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. civil penalties, pursuant to Indiana Code § 24-5-0.5-4(g), for the Defendant's knowing violations of the Indiana Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- e. civil penalties, pursuant to Indiana Code § 24-5-0.5-8, for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- f. all other relief that the Court finds just and proper.

Respectfully submitted,

STEVE CARTER
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By:



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